

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

CARLOS E. GUTIERREZ,

Civil No. 04-2627 (JRT/JSM)

Plaintiff,

v.

JAMES S. GUNDERSON,
GEORGE SANTINI,

**ORDER DENYING REQUEST TO
FILE MOTION FOR
RECONSIDERATION OF THE
COURT'S FEBRUARY 5, 2007
ORDER**

Defendants.

Melissa Dosick Riethof and Barbara A. Zurek, **MEAGHER & GEER, PLLP**, 33 South Sixth Street, Suite 4200, Minneapolis, MN 55402, for defendant Gunderson.

Mary J. Madigan, Assistant United States Attorney, **OFFICE OF THE UNITED STATES ATTORNEY**, 600 United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, for defendant Santini.

Carlos E. Gutierrez filed this prisoner civil rights lawsuit against James S. Gunderson, a contract dentist at the Federal Correctional Institution in Sandstone, Minnesota, and George Santini, the Clinical Director at the same institution. On February 5, 2007, the Court denied without prejudice Gunderson's motion to dismiss and Santini's motion to dismiss or for summary judgment. The Court stayed the case until the issues arising under Federal Rule of Civil Procedure 25 can be resolved.

On February 14, 2007, Gunderson requested by letter that the Court allow him to bring a motion to reconsider the order dated February 5, 2007. Gunderson argues in the letter, as he does in his motion to dismiss, that Gutierrez's medical malpractice claim is

barred by the statute of limitations. Gunderson also argues that the medical malpractice claim is extinguished by Gutierrez's death. Gunderson does not discuss in the letter Gutierrez's claim under the Eighth Amendment.

The Court will rule on the merits of Gutierrez's claims only if the case is not otherwise resolved under Federal Rule of Civil Procedure 25. The Court is not persuaded that all of Gutierrez's claims have been extinguished by his death, but Gunderson may make these arguments to the Court in response to a motion for substitution brought by Gutierrez's successors or representatives. Gunderson's request to file a motion to reconsider [Docket No. 66] is therefore **DENIED**.

DATED: February 21, 2007
at Minneapolis, Minnesota.

s/ John R. Tunheim
JOHN R. TUNHEIM
United States District Judge